

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN SOSINAVAGE,)	14-CV-3292-JBS-AMD
)	
Plaintiff,)	
)	
vs.)	
)	
)	
POLICE CHIEF JOHN SCOTT)	
THOMSON, et al,)	
)	
Defendants.)	
-----)	
ANTHONY CARMICHAEL,)	14-CV-3323-JBS-AMD
)	
Plaintiff,)	
)	
vs.)	
)	
)	
POLICE CHIEF JOHN SCOTT)	
THOMSON, et al,)	Camden, NJ
)	March 22, 2017
Defendants.)	3:16 p.m.
-----)	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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APPEARANCES: Continued

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***** Transcriber's note -- (inaudibles) are due to poor audio and or echo in microphones.**

Colloquy

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1 (The following was heard via telephone at 3:16 p.m.)

2 THE COURT: All right, we're on the record. Good
3 afternoon. This is in two cases: Carmichael vs. Thomson and
4 Sosinavage vs. Thomson, Case Numbers 14-3323, 14-3292. It's
5 approximately 3:16 p.m.

6 This call was scheduled for 3:00. We don't have Mr.
7 Eastlack on the phone. My office did reach out to him, but
8 let's just place the appearances on who's on the phone right
9 now.

10 MS. COOPER: Yes, good afternoon, Your Honor, Cheryl
11 Cooper on behalf of the plaintiff.

12 MR. TERIS: Your Honor, this is Benjamin Teris from
13 Brown & Connery on behalf of the county defendants.

14 MR. BRANDES: Hello? Hello?

15 THE COURT: Yes, who's that, Paul?

16 MR. BRANDES: Yeah. Eastlack apparently was aware
17 of the conference but he's on his feet, he's on trial in
18 Camden and apparently his office called to Judge Donio and --

19 THE COURT: This is --

20 MR. BRANDES: -- Judge Donahue apparently is
21 reconvening today at 4:30, --

22 THE COURT: Yes.

23 MR. BRANDES: -- but I'd like to hear that from
24 Judge Donio's clerk.

25 THE COURT: This is Judge Donio now.

Colloquy

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1 MR. BRANDES: Oh, I'm sorry.

2 THE COURT: I'm just asking for you to put your
3 appearance on the record, please.

4 MS. COOPER: Paul, put your appearance on the
5 record.

6 MR. BRANDES: I'm sorry. Paul Brandes on behalf of
7 the plaintiff. I'm sorry, Your Honor.

8 THE COURT: All right, thank you. Mr. Brandes is
9 correct, our office reached out to Mr. Eastlack's office.
10 Apparently there was a statement as I understand it made to my
11 judicial assistant that they were awaiting the call and did
12 not have the dial in number, when my assistant provided the
13 dial in number I guess that we were provided with.

14 I was then informed vis-a-vis my assistant through
15 Mr. Eastlack's assistant that Mr. Rybeck is on vacation and
16 Mr. Eastlack thought the call was going to be at 3:00 and now
17 is in trial and unable to attend.

18 It is not acceptable to the Court to push this call
19 off so I'm going to reconvene at 4:30 and directed my
20 assistant to direct Mr. Eastlack's assistant that Mr. Eastlack
21 should be prepared to appear by 4:30. Are other counsel ready
22 and available at 4:30 today?

23 MS. COOPER: Yes, Your Honor.

24 MR. BRANDES: Yes, Your Honor.

25 MR. TERIS: Yes, Your Honor.

Colloquy

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1 THE COURT: All right, thank you. Then I'll
2 reconvene at 4:30. I would ask that -- is it going to be the
3 same dial in number? Who provided the dial in number?

4 MR. BRANDES: I did. Paul Brandes, and yes, it
5 should be the same information, Your Honor.

6 THE COURT: All right, thank you. And, Mr. Brandes,
7 please re-fax that to Mr. Eastlack's office since apparently
8 they said they didn't have it or --

9 MR. BRANDES: Yeah, we sent it by -- we sent it by
10 fax and email but we'll do so again, Your Honor.

11 THE COURT: All right. If you sent it by fax and
12 email, please be able to address that at the conference at
13 4:30 and maybe I misunderstood. We'll see directly from Mr.
14 Eastlack why he wasn't on the call at 3:00. All right, you
15 all have --

16 MR. BRANDES: Very good. Thank you, Your Honor.

17 THE COURT: All right, we'll talk to you all again
18 at 4:30. We are adjourned for now.

19 MR. BRANDES: Thank you for your indulgence.

20 (Off the record at 3:18:57 p.m.)

21 (Back on the record at 4:30:55 p.m.)

22 THE COURT: We're on the record -- are we on the
23 record?

24 COURTROOM DEPUTY: Yes.

25 MR. BRANDES: Good afternoon, Your Honor.

Colloquy

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1 THE COURT: All right. We're reconvening at 4:30.
2 Do we have everyone on the phone?

3 MR. BRANDES: Everybody except Mr. Eastlack, Your
4 Honor.

5 THE COURT: Has anybody heard from Mr. Eastlack?

6 MR. BRANDES: Your Honor, this is Paul Brandes
7 speaking. My office spoke with his assistant and reiterated
8 relevant information and we were advised that he would be
9 present at 4:30.

10 THE COURT: All right. So let me just take a roll
11 call and see who's on the phone.

12 MS. COOPER: Yes, good afternoon, Your Honor, this
13 is Cheryl Cooper on behalf of the plaintiff.

14 MR. BRANDES: Paul Brandes on behalf of the
15 plaintiff.

16 MR. TERIS: Your Honor, this is Benjamin Teris from
17 Brown & Connery on behalf of the county defendants.

18 THE COURT: Does anybody have the exact time from
19 their cell phone?

20 MR. BRANDES: I'm sorry, Your Honor?

21 THE COURT: My records, it's 4:31. This was
22 rescheduled for 4:30. I'm not going to keep counsel on the
23 phone yet again for some time period for Mr. Eastlack to call
24 in. I'm going to have to reschedule again. Are counsel
25 available tomorrow morning?

Colloquy

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1 MS. COOPER: Yes, Your Honor.

2 MR. TERIS: I'm not available tomorrow morning, Your
3 Honor. I'm in Atlantic City division on a civil rights
4 matter.

5 THE COURT: Mr. Teris, what time will you be
6 available?

7 MR. TERIS: After 1:00 p.m. definitely.

8 THE COURT: Ms. Cooper?

9 MS. COOPER: I will make myself available, Your
10 Honor.

11 THE COURT: All right. I'm going to --

12 MR. BRANDES: And I will make myself available as
13 well, Your Honor.

14 THE COURT: All right, thank you.

15 MR. TERIS: Your Honor, I could probably join in the
16 call on the way down Atlantic City if necessary.

17 THE COURT: Did someone just join the call?

18 MR. EASTLACK: This is John Eastlack.

19 THE COURT: All right, now we're ready to go. Mr.
20 Eastlack, what happened to your appearance at 3:00 today?

21 MR. EASTLACK: I'm sorry, Your Honor? I couldn't
22 quite hear you, Judge. I apologize.

23 THE COURT: All right. I'm just inquiring as to
24 your appearance at 3:00 today. What occurred?

25 MR. EASTLACK: Judge, I did not receive any -- I

1 mean Mr. Brandes indicated in an email to my office that he
2 had sent call-in information. I did not receive that or I
3 didn't see it in my email, Judge. I just did not have it and
4 I didn't know how we were going to go about doing it. I had
5 actually seen Ms. Cooper earlier in the day in Municipal Court
6 in -- in Deptford Township and she said we have a conference
7 call at 2:00.

8 And I got out of this hearing that I'm in and went
9 outside at 2:00 and talked to my office and they said that
10 there's nothing -- nothing about 2:00 and they said it was at
11 3:00. And I asked is there -- you know, is there anything --
12 you know, how -- how am I going to get in on this call?

13 She said I don't know, I thought that we would be
14 getting the call but I don't have any calling information. So
15 and I spoke to my paralegal, Maria, with that. So that's the
16 explanation that I have, Judge. I don't have a different one.

17 THE COURT: Mr. Brandes, is your representation as
18 an officer of the court that you did send the email?

19 MR. BRANDES: I can represent to Your Honor that my
20 assistant was instructed to send an email and a fax. She did
21 indeed send an email on March 20th at 3:28 p.m. to Mr. Rybeck
22 at Weir & Partners and Ms. Londar, L-O-N-D-A-R, who's also on
23 the file at Weir & Partners, with the call-in information, and
24 that same call information was also faxed by letter that same
25 day at approximately that same time to those two individuals

1 at Weir & Partners, Mr. Eastlack's office as well.

2 THE COURT: All right, well let's just move forward
3 today. Mr. Eastlack, you have three different lawyers on the
4 record here. Someone's got to be lead as far as obtaining
5 information on these calls.

6 I'm going to move forward on this matter now, but it
7 did require some moving of -- or asking counsel to call back
8 in and I really wanted to get through these issues. Here's
9 what we're going to do.

10 First of all, I'm just going to address the
11 deposition dates. You have three dates that are agreed to,
12 correct?

13 MR. EASTLACK: Yes, Your Honor.

14 THE COURT: Ms. Cooper, pick who you want those
15 dates.

16 MS. COOPER: I did that already, Your Honor. I gave
17 the deposition notices for the 27th, 28th and 29th.

18 THE COURT: And who are they? Give me date order.

19 MS. COOPER: On the 27th I designated Wysocki, on
20 the 28th I designated J.L. Williams --

21 THE COURT: Ms. Cooper, I can't hear you. Please
22 speak up. Your voice just dropped for whatever reason.

23 MS. COOPER: I'm sorry. On the 27th I have
24 designated Defendant Wysocki, on the 28 I have designated
25 Defendant Williams, J.L. Williams, and on the 29th I have

1 designated former Deputy Chief Lynch.

2 THE COURT: Okay. Mr. Eastlack, it's plaintiff's
3 prerogative to choose the order, that's the dates she wanted
4 to do them, I don't see any reason why we can't accommodate
5 those dates.

6 MR. EASTLACK: Well, Judge, other than the fact that
7 Mr. Wysocki is not available on Monday, and I told Ms. Cooper
8 -- because originally I was trying to squeeze in five people
9 because I didn't know she was only going to have three, and so
10 I went to great lengths to speak with him.

11 The only day that Mr. Wysocki wasn't available was
12 the 27th. And I told her with Mr. Lynch and Mr. Wysocki had
13 flexibility for either Wednesday or -- I'm sorry, Tuesday or
14 Wednesday, and I could switch them around to try to
15 accommodate her.

16 But, you know, and I -- that is in a letter to her.
17 I don't discern any magic to the order, Your Honor. I'm not
18 being sarcastic with using the term "magic". I -- I don't
19 see the -- the issues in the case and, you know, why that
20 would be required.

21 I mean, these are professionals that work. Mr.
22 Wysocki is the Deputy Chief of Police of Camden County Police
23 Department. There -- I was indicated that he -- and I didn't
24 try to just pick these -- this order just to frustrate Ms.
25 Cooper; I did it because I thoughtfully contacted them.

1 And again, Your Honor, I did not even know, even
2 though Ms. Cooper said please reserve the -- these last three
3 dates that she said she could be available, the other two
4 dates she said she couldn't. I had to do my best to try to
5 squeeze in five people into three days and it took a lot of
6 time to try to do that.

7 And then I got the deposition subpoenas on Monday
8 after a lot of emails from Ms. Cooper saying you're not going
9 to tell me what I'm going to do, I'm going to designate the
10 order the way I want it and me writing to her saying, Cheryl,
11 you could you please, you know, exercise some courtesy here,
12 I'm trying to do that.

13 And I told that I -- there was flexibility with
14 Lynch and Wysocki, moving them between, you know, Tuesday and
15 Wednesday and I -- so I would ask the Court just like we would
16 have if this was a -- a more leisurely circumstance, that we
17 try to pick dates that -- where people are, you know,
18 available.

19 I mean, he has police-related tasks to engage in
20 that day that are important that he has to deal with. And I
21 just would appreciate --

22 THE COURT: Okay.

23 MR. EASTLACK: -- the scheduling the deposition to
24 allow it, Your Honor.

25 THE COURT: All right. Let me just -- let me just

1 address it this way. Ms. Cooper, is there any reason why you
2 can't do Lynch first and then Wysocki?

3 MS. COOPER: That's a no, Your Honor. In fact, I
4 only got Mr. Eastlack's letter in that regard today --

5 THE COURT: All right. Let me just --

6 MS. COOPER: -- and I have not been able -- I didn't
7 even see it before I saw him in Court or I would have
8 addressed that with him this morning.

9 THE COURT: Okay. I'm --

10 MS. COOPER: But I do not mind switching the two.

11 THE COURT: All right. So and then how long are you
12 going to be in each of these depositions?

13 MS. COOPER: I'm assuming, as I said before, each
14 one of those five people is for the day.

15 THE COURT: Okay. And what time are you starting?

16 MS. COOPER: 10:00 a.m. --

17 THE COURT: All right.

18 MS. COOPER: -- except on the 29th because I have a
19 doctor's appointment that morning that I can't change.

20 THE COURT: Well, if you choose to start later,
21 you're going to have this witness just that day and you have
22 to end at a -- so you're going to have to move quicker.

23 MS. COOPER: Well, then that's the reason that I'm
24 -- there's Wysocki is the one that I believe is going to take
25 the longest --

1 THE COURT: All right.

2 MS. COOPER: -- out of all of them so, --

3 THE COURT: Well, he's not here --

4 MS. COOPER: -- you know, then that's the reason why
5 he has to start first because I had this appointment for a
6 very long time so --

7 THE COURT: Wait.

8 MR. EASTLACK: Judge, I can make -- I can have Mr.
9 Wysocki on the second day --

10 THE COURT: That's what I understood.

11 MR. EASTLACK: -- of the depositions and I believe I
12 can move the other officer to Wednesday. We can do that.

13 THE COURT: Okay, what -- so the first deposition is
14 going to be on Monday the 27th. It's going to begin at 10:00
15 a.m. and it's going to be Lynch.

16 MR. EASTLACK: Lynch.

17 THE COURT: The second deposition is -- that's the
18 28th, that's also a 10:00 a.m. start, correct?

19 MS. COOPER: Correct.

20 THE COURT: And that will be Wysocki and the third
21 deposition, that's an 11:00 start?

22 MS. COOPER: Yes.

23 THE COURT: And that is Williams, okay? Those are
24 -- and you will take those three depositions. Do we have an
25 agreed upon location?

1 MS. COOPER: Yes, Mr. Eastlack's office is fine,
2 Judge.

3 THE COURT: And regardless of the status of
4 outstanding discovery those depositions will go forward. And
5 if ultimately I determine that the defendants have withheld
6 discovery and you have to re-depose, that will be at defense's
7 cost, but I'm not there yet. I want these depositions to go
8 forward so let's go forward with them. Okay, now there's two
9 more people you need -- two more depositions, right?

10 MS. COOPER: That's correct, Your Honor.

11 THE COURT: Do we --

12 MS. COOPER: Plaintiff and Thomson.

13 THE COURT: Do we have dates for those?

14 MR. EASTLACK: No.

15 MS. COOPER: No, because they -- there were no more
16 dates in March and neither Mr. Eastlack nor I coordinated to
17 get another date in April, but --

18 THE COURT: All right.

19 MS. COOPER: -- I just wanted insure the Court that
20 that was going to be acceptable. I'm sure we can figure out
21 something.

22 MR. EASTLACK: Judge, what we did, just so the Court
23 is familiar, I gave six dates to Ms. Cooper, Ms. Cooper
24 contacted my office and indicated she was not available on two
25 of them, and that's why I've been moved to try to provide Ms.

1 Cooper with a schedule for when people were available, you
2 know, for the five people being deposed on three dates.

3 I, of course, would not go beyond the 31st because
4 the discovery end date is done. Now, I -- I can tell Ms.
5 Cooper, that I have -- my schedule has since cleared for the
6 30th so I'm available that day.

7 THE COURT: Are you available that day, Ms. -- are
8 you available that day, Ms. Cooper?

9 MS. COOPER: I think that is the day that I have --
10 I have an all day mediation with like six other lawyers, so
11 that -- I'm not sure if it's the 30th or 31st, I'm trying to
12 pull up the schedule right now. I think that would be the
13 reason that I couldn't do it.

14 And the other dates that Mr. Eastlack gave me were
15 even before these documents would have been produced, which
16 I'm obviously not okay with that. I'm trying to pull it up
17 here. Just one minute.

18 MR. EASTLACK: Some were this week but --

19 MS. COOPER: It is -- yes, it is on -- it is on the
20 30th. That's why that week was not chosen before.

21 THE COURT: Here's what we're going to do. You're
22 going to meet and confer and get two dates by April 7th for
23 these last remaining depositions and I will have another call.
24 I could cancel the call if you send me a nice letter that says
25 you all agree.

1 But if you can't then I'll have to do what I'm doing
2 today and pick the date and time. And see if you can get
3 these other two depositions the first week of April -- April
4 3rd through the 7th and reach agreement on that by the end of
5 this week and send me a letter by 3/24.

6 Now, on the discovery, I'm trying to make sense of
7 what it is that is outstanding. Let me -- let me just address
8 one issue first because we have the county counsel on the
9 phone and they really don't have a lot of issues because they
10 have their pending motion, but now it looks like you're
11 seeking discovery that you didn't seek before. Is that right,
12 Ms. Cooper?

13 MS. COOPER: Well, Your Honor, we didn't seek
14 discovery on the economic part of it and it's really just my
15 client's payroll records which -- and his -- and the payroll
16 struck (phonetic) salary and payments, you know, for the
17 plaintiff. I mean, I thought that they would show --

18 THE COURT: All right. That's not how I read your
19 request. It looked like you wanted other people's payroll
20 records too. You just want your own client's payroll records?

21 MS. COOPER: Yes, I want my client's payroll
22 records. I wanted the salary of when they first all started
23 there for each one of the positions because in order to
24 calculate the damages of how -- if you're -- if you're
25 claiming --

1 THE COURT: Now, I just --

2 MS. COOPER: -- that, you know, someone was flipped
3 to your captain's level --

4 THE COURT: I just want to know what it is that
5 you're requesting. Your client's --

6 MS. COOPER: I'm --

7 THE COURT: Each of your client's personnel files as
8 it relates to their payroll. Don't they have access to that
9 electronically?

10 MS. COOPER: My client Sosinavage does not have
11 anything with the county so it would only be for Carmichael.

12 THE COURT: Okay.

13 MS. COOPER: And, we only need his pay information
14 -- his payroll information and then I just need the -- the
15 county document or whatever that shows -- or the contract that
16 shows what the salary was for lieutenant, captain, deputy
17 chief, chief.

18 THE COURT: Okay. So it's more than just your
19 client's payroll record. You want the salary structure.

20 MS. COOPER: Well yes, but I believe initially it
21 was published publicly because when they all were first hired
22 it's just the updates. And, the -- and what my client
23 explained to me, there was a contract negotiated at some point
24 recently and that I don't have the information as to what the
25 pay scales are.

1 THE COURT: All right.

2 MS. COOPER: That's what I'm looking for.

3 THE COURT: All right. But you would agree you
4 didn't request that earlier?

5 MS. COOPER: No, I did not.

6 THE COURT: So what is the basis to make that
7 request now in light of the time of the case?

8 MS. COOPER: Well, Judge, it's just merely to be
9 able -- I wanted to collect this information to be able to
10 send to the economic expert in anticipation of trying to have
11 that ready in advance. That was it. There was no -- I don't
12 want to depose anybody, I don't want to do anything. I
13 suppose my client can go to HR in the county and request his
14 own records but, you know, I can just have him do that.

15 THE COURT: I think that's where I was headed. Mr.
16 Teris, can't the plaintiff -- doesn't the plaintiff have the
17 right to get his own records regardless of the litigation?

18 MR. TERIS: Sure. And if he wants to go request it
19 to HR that's -- he's absolutely allowed to do that. I don't
20 have any objection to that. My only objection is to seeking
21 any additional -- any discovery regardless of whether it's for
22 a -- for use by an expert witness because that should have
23 been done during fact discovery.

24 THE COURT: All right. So here's how -- here's
25 really -- we're having an argument over something that really

1 we should have a discussion about because the plaintiff can go
2 to the human resources and say give me my pay records, right?
3 That would be that. And the plaintiff can serve an OPRA
4 request because it's a public record, what the salary
5 structure is. It's not a secret, right?

6 MR. TERIS: That's true, yes, Your Honor.

7 THE COURT: And so and that's outside the discovery.
8 You can seek that. Regardless of the fact we have a discovery
9 date they're entitled to that under OPRA. So if the county is
10 going to stand on its objection, Ms. Cooper, you're going to
11 have to obtain it some other way.

12 MS. COOPER: Sure.

13 THE COURT: All right. That takes care of the
14 county. Thank you, Mr. Teris.

15 MR. TERIS: Thank you.

16 THE COURT: Now, that gets us to this dispute on
17 these IA files and what's missing and what's not missing, so I
18 quite frankly at this point I think the best way to proceed is
19 by way of motion to compel -- formal motion. What is it that
20 you claim you haven't gotten?

21 The county says -- the city says we gave you
22 everything. Ms. Cooper, you say you have, you've attached
23 documents and I appreciate the fact that you've made sure that
24 there were hand deliveries to the Court so that I have the
25 hard copies.

1 But it's unclear to me what you're missing with
2 respect to the IA logs. Are you missing years or is it that
3 the information you have now is different than the information
4 you were previously provided?

5 MS. COOPER: Well, it's two fold. With respect to
6 the IA logs, they are not the same as what was produced before
7 and so that is part of it. And also in the last conference,
8 Your Honor ordered through 2012, and as I indicated in my
9 letter, my client -- one of my clients at least and I'm not
10 sure about Carmichael but Sosinavage for certain has Internal
11 Affairs investigation that -- where either he was a part of or
12 was investigated in 2013, --

13 THE COURT: Well, all right, but that's not --

14 MS. COOPER: -- which -- which --

15 THE COURT: -- but that's not what I ordered, right?
16 So are you asking for something beyond the order or are you
17 saying the order wasn't complied with?

18 MS. COOPER: No, I'm not -- with respect to what the
19 Court ordered, initially, Mr. Eastlack did not produce any of
20 the Excel files. He only produced a PDF of the paper copies
21 which was the first letter that I sent to the Court.

22 And you can see in those documents that there's big
23 sections of it where the lines are not there and there's --
24 they're in a different format from the ones that were produced
25 in 2012.

1 In 2012 I attached that and I didn't have a color
2 copier and I apologize, I was trying to make it as simple as
3 possible but I marked the documents for the Court that were
4 produced in 2012.

5 If you look at the columns and the way that it's set
6 up and all of that, it's different than for the years -- well,
7 they produced 2007 and 2008 -- part of 2008. The 2008 records
8 are not the same as the 2008 records that were just produced.

9 THE COURT: All right, I'm going to try this again.
10 Maybe I'll be clearer. Are you saying that the order hasn't
11 been complied with, or are you arguing that there's a
12 difference in what was currently produced and what was
13 previously produced, or are you arguing both?

14 MS. COOPER: I'm arguing that it's different.

15 THE COURT: Okay. So you now have the Excel
16 spreadsheets?

17 MS. COOPER: Yes, I do.

18 THE COURT: And you have everything through 2012?

19 MS. COOPER: Well, with respect to the Internal
20 Affairs logs, yes.

21 THE COURT: Okay. Which is what the Court ordered,
22 correct?

23 MS. COOPER: That's correct, yes.

24 THE COURT: All right. Mr. Eastlack, do you have
25 any response as to the disparity in the prior production to

1 the current production?

2 MR. EASTLACK: Judge, I do not because we just spoke
3 with the person who's in charge of that in Internal Affairs
4 and he -- I'm told he hit a button and we got this. And what
5 I had sent to Ms. Cooper writings, using electronic format,
6 was -- you know, I emailed it to her and gave her a paper
7 copy.

8 She really didn't specify Excel so it wasn't
9 originally sent. I discern -- I didn't discern any
10 difference but I guess the Excel spreadsheet lets you break it
11 down month by month by month, but she got the compilation of
12 all them, and there's essentially end year for each of them
13 that contained all the information.

14 So I didn't -- I didn't discern any difference
15 between the two which I think was originally Ms. Cooper's
16 fault of our office because she -- her -- electronic in her
17 mind meant the actual Excel record from the department.

18 Once I was able to discern that, because I couldn't
19 understand it, I sent her the exact Excel without any
20 deletions, without anything taken out -- nothing. It's all
21 there exactly the way received it and I don't know how else to
22 provide it to her. So --

23 MS. COOPER: Your Honor, I'm not suggesting that Mr.
24 Eastlack modified it at all. It's not -- that's not --

25 THE COURT: Well I -- all right, well you'll have

1 to, you know, inquire at depositions about why there's this
2 difference. I don't know if it's a matter of the fact that it
3 was updated from the last time and so you have a different
4 version because this is a more recent version.

5 I mean, it's a spreadsheet -- I don't know. For
6 example, what I could see was sometimes a file was pending and
7 then in the later production it had a close date, so I don't
8 know if people went in there and updated the spreadsheet. So
9 take your depositions and then if you think there's a basis
10 for a claim that it was somehow withheld improperly, you can
11 make a formal motion.

12 As it relates to other discovery that you're now
13 seeking, you'll need to make a formal motion because I didn't
14 -- I addressed the IA logs. My recollection was that was the
15 scope of what you're requesting and I'm not sure what else it
16 is you're seeking today.

17 MS. COOPER: Well, Your Honor, just a quick response
18 to that is simply that in the May 26th disclosures that the
19 city provided initially, they did not update those disclosures
20 to contain the full and complete Internal Affairs cards, even
21 my clients.

22 And that's -- that's what I attached to the letter
23 that I had hand delivered to the Court today because you can
24 see there for example on the one document that includes us,
25 the last entry on there is from 2008 but there's IA files that

1 were filed against him -- investigations, and I included that
2 sheet for 2010 that's not on that card. And then of course
3 the department closed in 2013.

4 THE COURT: So are you looking for updated -- you
5 mean an updated Rule 26 disclosure of your client's own IA
6 file files against him?

7 MS. COOPER: Not only my client, but like I showed
8 the Court there, the main defendants' cards were also
9 previously produced. There's so much that was previously
10 produced such as their personnel files which contain all the
11 transfer orders and things of that nature that were never
12 updated or supplemented through Rule 26(e), and that's what I
13 just pointed out.

14 THE COURT: Okay. Mr. Eastlack, don't you have an
15 obligation to update your Rule 26 disclosures under Rule
16 26(e)?

17 MR. EASTLACK: Judge, I don't -- I -- Judge, there's
18 an echo in there. I thought somebody else was trying to talk.
19 It's actually my own voice. I apologize. I thought I was
20 talking over someone. Judge, I discern what was produced at
21 the inception of this under Rule 26, everything that we had at
22 that time, we produced it.

23 Anything beyond that would be discovery requests
24 that the plaintiff could make and we provided what we had at
25 the time that this -- the inception of this case and provided

1 it to Ms. Cooper. If she wanted additional discovery beyond
2 that, she could have --

3 THE COURT: Well --

4 MR. EASTLACK: -- propounded, you know, this
5 discovery request like any other lawyer does --

6 THE COURT: Well --

7 MR. EASTLACK: -- in any case and --

8 THE COURT: Let me just interrupt for a minute
9 because I want to close this proceeding now and if we have to
10 reconvene tomorrow we can. I'm going to direct the defendant
11 to review Rule 26(e) and the obligation of a party who's made
12 a disclosure to supplement or correct it in a timely manner if
13 the party learns that in some material respect the disclosure
14 or response is incomplete or incorrect.

15 There is a duty to supplement. I'm going to order
16 the city -- or I'm going to order Mr. Eastlack, your clients,
17 which is the city, right, to --

18 MR. EASTLACK: Yes, it is --

19 THE COURT: -- to update --

20 MR. EASTLACK: -- the city defendants, Judge.

21 THE COURT: -- and consistent with Rule 26(e) your
22 disclosures and to do so by March 27th. If they need to be
23 updated, if you take the position that there's no disclosures
24 that are required to be updated to meet your -- your
25 obligations under 26(e), then you can submit a letter to the

1 plaintiff and say why.

2 If it turns out that that's inaccurate, then you
3 might have some issues. But you can take a look very closely
4 at Rule 26(e) and make your supplement by the -- by Monday so
5 that the information is available for the depositions.

6 MR. EASTLACK: Okay.

7 THE COURT: There is one deposition that will begin
8 on Monday so we'll just have to go forward with the other two
9 depositions with that information.

10 Anything further for today?

11 MS. COOPER: No, Judge.

12 THE COURT: All right. So let me clear --

13 MR. TERIS: No, Your Honor.

14 THE COURT: -- clear then. There's no -- I'm not
15 ordering the county to do any further discovery. That
16 discovery request can be obtained. It doesn't need to be
17 obtained for this litigation and it's out of time with respect
18 to the county.

19 But the plaintiff is entitled to the -- his own
20 employment records, I'm sure he can get them and there's been
21 no objection by the county for that. I will encourage the
22 county and the plaintiff to see if they can reach agreement on
23 the salary structure.

24 It's a corporate record. It may be a public
25 document that's available already online or an OPRA request

1 and perhaps the parties can just reach agreement on the -- on
2 that issue.

3 As it relates to the depositions, I've provided the
4 date certain in directing the parties to meet and confer to
5 obtain dates for the remaining depositions, to let me know by
6 Friday of this week of those dates.

7 I'm also directing Mr. Eastlack on behalf of his
8 clients to review the Rule 26 disclosures and to update them
9 or correct them or add to them as required pursuant to Rule
10 26(e) to supplement the disclosures. If supplementation is
11 required, it should be done so no later than I'll say noon,
12 Monday, March 27th, 2017, and that shall I think address the
13 issues before me today.

14 MR. EASTLACK: Judge, can I ask just for
15 clarification because I want to make sure that I can --
16 obviously I want to comply to the letter with the Judge's
17 order, okay -- with the Court's order.

18 To the extent that Ms. Cooper demanded other
19 discovery that doesn't fall under the duty of the defendant
20 under 26(e) to update and supplement, then with regard to
21 those additional records that are sought that don't fall under
22 that which those city defendants are not obligated to comply
23 with that, I'm going to say attached additional records
24 request to each of the deposition subpoenas.

25 THE COURT: Ms. Cooper?

1 MS. COOPER: Your Honor, those deposition subpoenas
2 were served in February and I have a right to do that under
3 the rules. And they had more than 30 days to even collect
4 that information, most of it which are business records that
5 they should readily have available. And so no, I do not agree
6 with that at all.

7 And most everything in there was already previously
8 requested, whether they turned it over or not and I might have
9 even had it in the state case. I am literally having to go
10 through page by page now to check and see because I took Mr.
11 Eastlack and Mr. Rybeck at their word when they -- I believed
12 that I had a document and I have not been able to spend the
13 time to find it from the state case where we agreed to
14 transfer everything over and they agreed to waive the statute
15 of limitations defense and I agreed to waive Mr. Carmichael's
16 one claim, which was an administrative sort of appeal and put
17 that in as a retaliation claim.

18 And all of the documents from the lower level were
19 to be utilized here. I believe that's all memorialized but at
20 this time, I mean, I literally have been concentrating on what
21 I meant to do for this coming week as opposed to --

22 THE COURT: Okay.

23 MS. COOPER: -- you know, going back and rechecking
24 every single thing.

25 THE COURT: Ms. Cooper, if you find that letter

1 you'll send it to the Court.

2 MS. COOPER: Yes.

3 THE COURT: In the meantime, Mr. Eastlack, whatever
4 was attached to deposition notices that were served back
5 before the end of this week you'll need to comply with.

6 MR. EASTLACK: Judge, I'm going to tell you I don't
7 know that I -- because this -- these are requests that are
8 outside of Rule 26, many of them. They were never contained
9 in the demand for production of documents and which the time
10 to do that has long, long, long passed.

11 And then Ms. Cooper attaches it to a deposition
12 notice, deposition subpoena, and says, you know, produce the
13 -- you know, for the city to be able to foresee that this
14 would have been required, I mean, I don't -- I don't have a
15 response to it. They're things that could take an
16 extraordinary amount of time to try to find.

17 THE COURT: Did you submit it?

18 MR. EASTLACK: They were never asked for before.

19 MS. COOPER: No, I didn't. The documents that are
20 contained on there are (inaudible) from the State Court case
21 as well as documents that were -- I believe were already
22 produced. But in addition to that, discovery was not closed
23 when I sent the deposition notices, so I could have served
24 them up until the very end.

25 I'm getting into trouble (inaudible) as I've said on

1 every conference from the very beginning. In just the very
2 beginning, I haven't been able to even designate which IA
3 files out of the logs that we want to review at this point for
4 the Monell claim because I just got them.

5 THE COURT: Ms. Cooper, your requests, are they
6 attached as a document request within the confines of a
7 deposition notice to a named party?

8 MS. COOPER: Yes.

9 THE COURT: Mr. Eastlack, did you object when you
10 received them?

11 MR. EASTLACK: I objected to the taking of the
12 depositions entirely, Judge. I recall that, you know, I got
13 first notification that they may even want to take depositions
14 the day before the discovery end date ended.

15 MS. COOPER: That's not true.

16 THE COURT: Well --

17 MR. EASTLACK: January 30th, Your Honor, is when we
18 received a letter from Ms. Cooper and the discovery end date
19 which would have been the 31st of January taking Mr.
20 Sosinavage's deposition when Ms. Cooper walked in with these
21 things. I mean, it asks for early warning system Camden
22 office of reports for 2008 to 2013, I mean, I don't even know
23 where they are.

24 MS. COOPER: That's not even Internal Affairs.

25 MR. EASTLACK: Cheryl, the City of Camden Police

1 Department has been closed for four years now. "Excessive
2 force reports for Internal Affairs served upon the city
3 attorney, business administrator or risk manager from 2008 to
4 2013."

5 MS. COOPER: Again, Judge, they are part of the
6 normal course of business that my client was the one who put
7 that system into place. And I know Mr. Eastlack knows this
8 because our office during the time of the consent decree used
9 to have to file those same documents with the Federal Court in
10 Camden.

11 So I mean, those things are things that are just in
12 a file cabinet and it shouldn't be any big deal to go pick
13 them up. The building that the county is in, is the same
14 building that they were in the city. The Internal Affairs
15 Department moved one of city police departments so that all
16 three communications divisions, that building over there, and
17 I don't know if it was given to him or not, but all of these
18 documents are documents that are -- that were supposed to be
19 part -- and I know that during the time my clients were there
20 were part of the everyday routine. And my client did a
21 monthly report as well as the excessive force report and Mr.
22 Eastlack is well aware of it. Those things used to have to be
23 filed with the Federal Court, with Judge Simandle every month.

24 THE COURT: All right, well --

25 MR. EASTLACK: Judge, just because I'm well aware of

1 something doesn't mean -- you know, that I know of the
2 existence that quarterly reports that were filed back in 2008
3 or 2009, where they are, where they're located. And Ms.
4 Cooper said they're just in some file cabinet after the Camden
5 City Police Department's been closed for four years?

6 I mean, this is the type of thing -- this is why you
7 have -- you know, a demand for production of documents that
8 could have been served -- you know, 18 months, two years ago.
9 I mean, to attach it to a deposition subpoena at the end of
10 the -- just before the close of the discovery end date and say
11 well, I gave it to you then, you should be able to jump and
12 get it, that's an abuse of discovery here by this plaintiff.
13 Saying that well, because I attached it to a deposition
14 subpoena the day before the end of the discovery end date, you
15 have an obligation to hop and jump and get these things when
16 ordinarily these are things that would have -- that would take
17 an extraordinary length of time and manpower to uncover and
18 produce.

19 I'm not going to be on this phone and say, Your
20 Honor, I can call up somebody and then they can just walk over
21 to a filing cabinet and get them out.

22 I know from being involved with the City of Camden
23 Police Department, representing them for a number of years,
24 that things don't -- aren't that easy where you can just walk
25 over to someplace and it isn't that in any police department,

1 let alone Camden, where you have things that are done four
2 years ago, and on top of it, you have a closed police
3 department for four years.

4 MS. COOPER: Well, Your Honor, first of all, they've
5 -- most -- a lot of those things were previously demanded.
6 Some of them were previously produced so I suggest that, you
7 know, it's not what Mr. Eastlack is representing.

8 That's why I even did that, because when I couldn't
9 get them to update what they were supposed to do, that's when
10 I said if I'm not going to get it any other way, I'm just
11 going to attach it to the deposition notice. And those things
12 were previously demanded. Some of these are things that have
13 to be filed with the Attorney General's Office, with the
14 county and all, and Mr. Eastlack is well aware of that as well
15 since we're talking about for 2008 to 2013 where the
16 department closed, that's five sheets of paper.

17 THE COURT: Okay, here's what I'm going to do. I
18 think I'm going to do it this way because I get -- I feel that
19 I'm getting different versions and I just want to -- I want
20 these depositions to go forward and I think the most
21 appropriate manner under Rule 1 of the Federal Rules of Civil
22 Procedure and under proportionality contours is to handle the
23 matter as follows.

24 Mr. Eastlack, produce what was produced to the State
25 Court, wherever the -- I'm sure there's a file somewhere that

1 says this was the discovery in the State Court. If you
2 produced it in the State Court, reproduce it again.

3 As it relates to the documents that are attached to
4 the -- the deposition notices that were served on February
5 28th -- correct, is that when they were served?

6 MS. COOPER: I believe -- I'm not positive of the
7 date as I'm sitting here.

8 MR. EASTLACK: Judge, the ones I have in front of me
9 are 3/20/17. I'm not going to -- I don't have in front of me
10 the other --

11 THE COURT: I have --

12 MR. EASTLACK: -- prior ones, Judge.

13 THE COURT: I have in front of me the ones in some
14 of the letters that seem to be dated 2/28 which was the last
15 deposition discovery deadline, so it looks like perhaps the
16 requests were made at the time at the last day of discovery,
17 is that --

18 MS. COOPER: You know, Your Honor, if you look back
19 to the letters that are in my submissions that I gave to the
20 Court, I wrote in January after the dates of the depositions
21 and I gave an order of the deponents at that time that I
22 wanted as well, and I tried several different times to do it
23 informally, and I didn't get it. At the end I said okay, I'm
24 not getting a response, today's the last day, I have no other
25 choice --

1 THE COURT: No, I understand that but --

2 MS. COOPER: -- so that's what I did.

3 THE COURT: But you served --

4 MR. EASTLACK: That was January 30th, Your Honor.

5 I'm sorry, Judge, I don't want to talk over the Court.

6 THE COURT: No, what I'm saying is there's no
7 dispute that on 2/28 you attached to these deposition notices,
8 the last day of discovery, what would be very voluminous
9 discovery requests.

10 And in part I thought I understood you to say that
11 the reason you did that is you thought you were going to get
12 what was produced in the State Court. There was some
13 agreement that now doesn't appear to be an agreement that the
14 defendants believe occurred and you had no other choice but to
15 attach it to a document request which, you know, I'm not even
16 sure if these witnesses are the persons with custody and
17 control of these documents and so, you know, I'm not sure the
18 deposition notices are the manner in which it's done and
19 generally discovery is not done that way. You send a document
20 request and you provide plenty of time.

21 Now, I hear your argument, well, we were trying to
22 get dates for the month, but that doesn't excuse serving a
23 formal document request as required under the rules.

24 MS. COOPER: Well, it would get -- I'm sorry, go
25 head.

1 THE COURT: So hearing in all the disputes I think
2 the best way to approach it is as follows:

3 Defendants shall produce what was produced in the
4 State Court. You produced it in the State Court -- reproduce
5 it. You update your Rule 26 disclosures and that will be the
6 end of your obligation at this time without prejudice to
7 plaintiff's application to make a motion to compel.

8 And when you make your motion to compel, you'll have
9 to demonstrate why the request was timely and appropriate and
10 why I should order the discovery and if it turns out you're
11 right, you might get to re-depose people at the defendant's
12 cost and if it turns out you're wrong, then -- then the
13 defendants may be able to potentially seek costs.

14 So we'll do it that way, but these depositions will
15 go forward and you'll get all the discovery that was already
16 produced, because I'm sure under Court rules and under the
17 Professional Rules of Conduct, files would have had to have
18 been maintained for a period of time and those files are
19 probably some were available to Mr. Eastlack.

20 Okay, there's how we'll proceed. Is there anything
21 further for today?

22 MS. COOPER: Not from me, Judge.

23 MR. EASTLACK: No, Your Honor.

24 THE COURT: All right, counsel, everyone have a nice
25 afternoon and we are adjourned.

1 ALL COUNSEL: Thank you, Judge.

2 (Matter concluded, 10:17 a.m.)

3 * * *

4
5 C E R T I F I C A T I O N

6 I, Diane Gallagher, court approved transcriber,
7 certify that the foregoing is a correct transcript from the
8 official electronic sound recording of the proceedings in the
9 above-entitled matter.

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